

## General Accounting Office

## §21.7

bad faith on the part of government officials or that regulations may have been violated. 15 U.S.C. 637(a).

(c) *Affirmative determination of responsibility by the contracting officer.* Because the determination that a bidder or offeror is capable of performing a contract is largely committed to the contracting officer's discretion, GAO will generally not consider a protest challenging such a determination. The exceptions are protests that allege that definitive responsibility criteria in the solicitation were not met and those that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation.

(d) *Procurement integrity.* For any Federal procurement, GAO will not review an alleged violation of subsections (a), (b), (c), or (d) of sec. 27 of the Office of Federal Procurement Policy Act, 41 U.S.C. 423, as amended by sec. 4304 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104-106, 110 Stat. 186, February 10, 1996, where the protester failed to report the information it believed constituted evidence of the offense to the Federal agency responsible for the procurement within 14 days after the protester first discovered the possible violation.

(e) Protests not filed either in GAO or the contracting agency within the time limits set forth in §21.2.

(f) Protests which lack a detailed statement of the legal and factual grounds of protest as required by §21.1(c)(4), or which fail to clearly state legally sufficient grounds of protest as required by §21.1(f).

(g) *Procurements by agencies other than Federal agencies as defined by sec. 3 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 472.* Protests of procurements or proposed procurements by agencies such as the U.S. Postal Service, the Federal Deposit Insurance Corporation, and non-appropriated fund activities are beyond GAO's bid protest jurisdiction as established in 31 U.S.C. 3551-3556.

(h) *Subcontract protests.* GAO will not consider a protest of the award or pro-

posed award of a subcontract except where the agency awarding the prime contract has requested in writing that subcontract protests be decided pursuant to §21.13.

(i) *Suspensions and debarments.* Challenges to the suspension or debarment of contractors will not be reviewed by GAO. Such matters are for review by the contracting agency in accordance with the applicable provisions of the Federal Acquisition Regulation.

(j) *Competitive range.* GAO will not consider protests asserting that the protester's proposal should not have been included or kept in the competitive range.

[61 FR 39042, July 26, 1996, as amended at 67 FR 79835, Dec. 31, 2002]

### §21.6 Withholding of award and suspension of contract performance.

Where a protest is filed with GAO, the contracting agency may be required to withhold award and to suspend contract performance. The requirements for the withholding of award and the suspension of contract performance are set forth in 31 U.S.C. 3553 (c) and (d).

### §21.7 Hearings.

(a) At the request of a party or on its own initiative, GAO may conduct a hearing in connection with a protest. The request shall set forth the reasons why a hearing is needed to resolve the protest.

(b) Prior to the hearing, GAO may hold a pre-hearing conference to discuss and resolve matters such as the procedures to be followed, the issues to be considered, and the witnesses who will testify.

(c) Hearings generally will be conducted as soon as practicable after receipt by the parties of the agency report and relevant documents. Although hearings ordinarily will be conducted at GAO in Washington, DC, hearings may, at the discretion of GAO, be conducted at other locations, or by telephone or other electronic means.

(d) All parties participating in the protest shall be invited to attend the hearing. Others may be permitted to attend as observers and may participate as allowed by GAO's hearing official. In order to prevent the improper